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January 5, 2001

Kristin L. Smith
Blumenfeld & Cohen
1625 Massachusetts Avenue, NW Suite 300
Washington, D.C. 20036

Re: Requested Adoption Under the FCC Merger Conditions

Dear Ms. Smith:

Verizon New England Inc., d/b/a Verizon Rhode Island, f/k/a New England Telephone and Telegraph Company, d/b/a Bell Atlantic – Rhode Island (“Verizon Rhode Island”), has received your letter stating that, pursuant to paragraph 32 of the BA/GTE Merger Conditions (“Merger Conditions”), released by the FCC on June 16, 2000 in CC Docket No. 98-184, MVX.COM Communications, Inc. (“MVX”) wishes to provide services to customers in Verizon Rhode Island’s service territory in the State of Rhode Island by adopting the voluntarily negotiated terms of the Interconnection Agreement between MGC Communications, Inc., d/b/a Mpower Communications Corp. (“Mpower”), and Verizon Pennsylvania Inc., f/k/a Bell Atlantic-Pennsylvania, Inc. (“Verizon Pennsylvania”) that was approved by the Pennsylvania Public Utility Commission (the “Commission”) as an effective agreement in the Commonwealth of Pennsylvania, as such agreement exists on the date hereof after giving effect to operation of law (the “Verizon Pennsylvania Terms”)¹.

I understand that MVX has a copy of the Verizon Pennsylvania Terms which, in any case, are attached hereto as Appendix 1. Except with respect to Pennsylvania state-specific pricing provisions, performance measures provisions, provisions that incorporate a determination reached in an arbitration conducted in the relevant state under 47 U.S.C. Section 252, provisions that incorporate the results of negotiations with a state commission or telecommunications carrier outside of the negotiation procedures of 47 U.S.C. Section 252(a)(1), and any provisions not required by Section 251(c) of the Telecommunications Act of 1996 (the “Act”) (including but not limited to any reciprocal compensation provisions which are also excluded as state-specific pricing provisions and,

¹ These “agreements” are not agreements in the generally accepted understanding of that term. Verizon Pennsylvania was required to accept these agreements, which were required to reflect then-effective FCC rules and other applicable law.

in any case, are not available for adoption under the Merger Conditions) contained in the Mpower/Verizon Pennsylvania agreement, Verizon Rhode Island does not oppose MVX's adoption of the Verizon Pennsylvania Terms at this time. However, please note the following with respect to MVX's adoption of the Verizon Pennsylvania Terms.

1. By MVX's countersignature on this letter, MVX hereby represents and agrees to the following three points:

(A) MVX adopts in the service territory of Verizon Rhode Island the Verizon Pennsylvania Terms of the Mpower/Verizon Pennsylvania agreement, and in applying the Verizon Pennsylvania Terms, agrees that MVX shall be substituted in place of Mpower in the Verizon Pennsylvania Terms wherever appropriate.

(B) MVX requests that notice to MVX as may be required or permitted under the Verizon Pennsylvania Terms shall be provided as follows:

To : MVX
Attention: Scott Schaefer
101 Rowland Way, Suite 300
Novato, CA 94945
Tel: 415-893-7180
Fax: 415-893-0569

(C) MVX represents and warrants that it is a certified provider of local telecommunications service in the State of Rhode Island, and that its adoption of the Verizon Pennsylvania Terms will only cover services in the service territory of Verizon Rhode Island in the State of Rhode Island.

2. MVX's adoption of the Verizon Pennsylvania Terms shall become effective upon the date that Verizon Rhode Island files this letter with the Rhode Island Public Service Commission (which Verizon Rhode Island will promptly do upon my receipt of a copy of this letter, countersigned by MVX as to points (A), (B) and (C) of paragraph 1 above) and remain in effect no longer than the date the Mpower/Verizon Pennsylvania agreement terminates or expires. The Mpower/Verizon Pennsylvania agreement is currently scheduled to expire on May 12, 2002. Thus, the Verizon Pennsylvania Terms adopted by MVX also shall terminate or expire on that date.

3. As the Verizon Pennsylvania Terms are being adopted by MVX pursuant to the Merger Conditions, Verizon Rhode Island does not provide the Verizon Pennsylvania Terms to MVX as either a voluntary or negotiated agreement. The filing and performance by Verizon Rhode Island of the Verizon Pennsylvania Terms does not in any way constitute a waiver by Verizon Rhode Island of any position as to the Verizon Pennsylvania Terms or a portion thereof. Nor does it constitute a waiver by Verizon Rhode Island of any rights and remedies it may have to seek review of the Verizon

Pennsylvania Terms, or to seek review of any provisions included in these Verizon Pennsylvania Terms as a result of MVX's election pursuant to the Merger Conditions.

4. MVX's adoption of the Verizon Pennsylvania Terms pursuant to the Merger Conditions is subject to all of the provisions of such Merger Conditions. For example, state-specific pricing, state-specific performance measures, provisions that incorporate a determination reached in an arbitration conducted in the relevant state under 47 U.S.C. Section 252, provisions that incorporate the results of negotiations with a state commission or telecommunications carrier outside of the negotiation procedures of 47 U.S.C. Section 252(a)(1), and provisions from the Mpower/Verizon Pennsylvania agreement that are not required pursuant to Section 251(c) of the Act shall not apply to MVX's adoption of the Verizon Pennsylvania Terms in the State of Rhode Island. In that regard, Verizon Rhode Island's standard pricing schedule for interconnection agreements (as such schedule may be amended from time to time) (attached as Appendix 2 hereto) shall apply to MVX's adoption of the Verizon Pennsylvania Terms. MVX should note that the aforementioned pricing schedule contains rates for certain services the terms for which are not subject to adoption under the Merger Conditions (e.g., number portability and reciprocal compensation). In an effort to expedite the adoption process, Verizon has not taken the time to delete such rates from the pricing schedule. However, the inclusion of such rates in no way obligates Verizon to provide the subject services and in no way waives Verizon's rights under the Merger Conditions. Verizon will, nonetheless, if requested by MVX, work cooperatively with MVX to the extent necessary to identify any other provisions of the Mpower/Verizon Pennsylvania agreement, including provisions that incorporate a determination reached in an arbitration conducted in the relevant state under 47 U.S.C. Section 252, provisions that incorporate the results of negotiations with a state commission or telecommunications carrier outside of the negotiation procedures of 47 U.S.C. Section 252(a)(1), and provisions that are not required pursuant to Section 251(c) of the Act that are not subject to the MFN obligations of the Merger Conditions so that MVX, should it desire similar terms in Rhode Island, may evaluate its options for obtaining such similar terms under applicable law.

As noted directly above, under the terms of paragraph 32 of the Merger Conditions, the MFN requirements in the Merger Conditions are exclusive of price terms, and prices applicable to interconnection arrangements are to be established on a state-specific basis. In addition, paragraph 32 of the Merger Conditions provides that Verizon is not obligated to permit a carrier to adopt any interconnection arrangement unless the arrangement "is consistent with the laws and regulatory requirements of the state for which the request is made[.]" Thus, by MVX's adoption of the Mpower/Verizon Pennsylvania agreement for Rhode Island, MVX must accept the pricing terms provided by the Rhode Island Public Utilities Commission, and it will not be entitled to terms and arrangements inconsistent with Rhode Island law and policy.

In addition, the Merger Conditions' MFN obligation on which MVX relies extends only to interconnection arrangements, UNEs, or provisions of an interconnection agreement that are "subject to 47 U.S.C. § 251(c)" As you know, the obligation of local exchange carriers to pay one another reciprocal compensation for local traffic is found

not in Section 251(c), but in Section 251(b), of the Act. On its face, therefore, the Merger Conditions' provision on which MVX relies does not extend to the reciprocal compensation provisions of Verizon Pennsylvania's interconnection agreements or to any other provisions therein not required by Section 251(c).

Even if this provision of the Merger Conditions were to be misconstrued as encompassing not only items subject to Section 251(c), but also items subject to Section 251(b), it would still not obligate Verizon Rhode Island to permit the cross-state adoption of compensation terms pertaining to Internet traffic. The FCC's February 1999 order expressly found that Internet traffic is not local. Accordingly, even if the Mpower/Verizon Pennsylvania agreement were mistakenly construed as containing a voluntary commitment to pay compensation on Internet traffic, that commitment would be entirely outside the scope of the requirements of Section 251, and therefore not subject to the cross-state MFN provisions of the Merger Conditions.

In addition, MVX's adoption of the Verizon Pennsylvania Terms shall not obligate Verizon Rhode Island to provide any interconnection arrangement or unbundled network element unless it is feasible to provide given the technical, network and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, Rhode Island and with applicable collective bargaining agreements.

5. On January 25, 1999, the Supreme Court of the United States issued its decision on the appeals of the Eighth Circuit's decision in Iowa Utilities Board. The Supreme Court modified several of the FCC's and the Eighth Circuit's rulings regarding unbundled network elements and pricing requirements under the Act. *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999). Certain provisions of the Verizon Pennsylvania Terms may be void or unenforceable as a result of the Supreme Court's decision of January 25, 1999, the United States Eighth Circuit Court of Appeals' recent decision in Docket No. 96-3321 regarding the FCC's pricing rules, and any related appeals applicable to the FCC's new UNE rules or UNE pricing rules. Moreover, nothing herein shall be construed as or is intended to be a concession or admission by Verizon Rhode Island that any provision in the Verizon Pennsylvania Terms complies with the rights and duties imposed by the Act, the decisions of the FCC and the Commissions, the decisions of the courts, or other law, and Verizon Rhode Island expressly reserves its full right to assert and pursue claims arising from or related to the Verizon Pennsylvania Terms.

6. Verizon Rhode Island reserves the right to deny MVX's adoption and/or application of the Verizon Pennsylvania Terms, in whole or in part, at any time:

- (A) when the costs of providing the Verizon Pennsylvania Terms to MVX are greater than the costs of providing them to Mpower;
- (B) if the provision of the Verizon Pennsylvania Terms to MVX is not technically feasible;

- (C) if Verizon Rhode Island otherwise is not obligated to permit such adoption and/or application under the Merger Conditions or under applicable law.

7. As noted above in paragraph 6, pursuant to Rule 809 of the FCC Regulations, the FCC gave ILECs the ability to deny 252(i) adoptions (and adoptions pursuant to the Merger Conditions, since the 252(i) rules also apply thereto) in those instances in which the cost of providing the service to the requesting carrier is higher than that incurred in serving the initial carrier or in which there is a technical incompatibility issue. The issue of reciprocal compensation for traffic destined for the Internet falls within this exception. Verizon Rhode Island never intended for Internet traffic to be included within the definition of local traffic and subject to the corresponding obligation of reciprocal compensation. Whatever doubt any party may have had with respect to this issue was removed by the Declaratory Ruling that the Federal Communications Commission (the “FCC”) released on February 26, 1999 which, among other things, “conclude[d] . . . that ISP-bound traffic is non-local interstate traffic.”² The FCC also reaffirmed that “section 251(b)(5) of the Act and [the FCC] rules promulgated pursuant to that provision concern inter-carrier compensation for interconnected *local* telecommunications traffic.”³ Based on the FCC’s Declaratory Ruling (among other things), it is clear that Internet traffic is not local traffic. Despite the foregoing, some forums have required reciprocal compensation to be paid. This produces the situation in which the cost of providing the service is not cost based. With this in mind (as well as the other bases noted in this letter), Verizon Rhode Island opposes, and reserves the right to deny, the adoption and/or the application of the provisions of the Verizon Pennsylvania Terms that might be interpreted to characterize traffic destined for the Internet as local traffic or requiring the payment of reciprocal compensation. However, Verizon Rhode Island shall, in any case, comply with the requirements of applicable law with respect to this issue.

8. Should MVX attempt to apply the Verizon Pennsylvania Terms in a manner that conflicts with paragraphs 3-7 above, Verizon Rhode Island reserves its rights to seek appropriate legal and/or equitable relief.

² Declaratory Ruling in FCC CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68 (rel. February 26, 1999), fn. 87. The D.C. Circuit Court has recently asked the FCC to explain more fully its reasoning in arriving at this conclusion in the Declaratory Ruling, but it has not rejected the conclusion. The FCC, moreover, has publicly since reiterated the correctness of its conclusion.

³ *Id.* (emphasis in original).

Please arrange for a duly authorized representative of MVX to sign this letter in the space provided below and return it to the undersigned.

Sincerely,

VERIZON NEW ENGLAND INC.

Jeffrey A. Masoner
Vice President – Interconnection Services

Reviewed and countersigned as to points A, B, and C of paragraph 1:

MVX.COM COMMUNICATIONS, INC.

By_____

Title_____

Attachments

Cc (w/out attachments): Hernando Londono